Filed 8/16/10 In re C.A. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re C.A., a Person Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. A.S., Defendant and Appellant.	E048892 (Super.Ct.No. J226752) OPINION

APPEAL from the Superior Court of San Bernardino County. Wilfred J. Schneider, Jr., Judge. Reversed.

Hassan Gorguinpour, under appointment by the Court of Appeal, for Defendant and Appellant.

Ruth E. Stringer, County Counsel, and Dawn M. Messer, Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

A.S. (mother) appeals from the findings and orders made at a jurisdictional and dispositional hearing concerning her son, C.A., born in 2002. Mother contends the juvenile court prejudicially erred when it accepted her submission on the recommendations of San Bernardino County Children and Family Services (CFS) without ensuring she understood the ramifications and wanted to waive her rights as required by California Rules of Court, rule 5.682.[1] She further contends the order removing C.A. from her custody should be reversed because it was not supported by clear and convincing evidence. We conclude the juvenile court's failure to comply with the requirements of California Rules of court was prejudicial error, because mother has identified meritorious defenses she could have raised.

II. FACTS AND PROCEDURAL BACKGROUND

In April 2009, CFS filed a petition under Welfare and Institutions Code[2] section 300, subdivisions (b) (risk of serious physical harm) and (c) (risk of serious emotional damage). The supporting facts for the section 300, subdivision (b) allegation were as follows: "The child . . . is suffering or is at substantial risk of suffering serious emotional damage, due to the ongoing allegations by the mother, . . . that he is being or has been sexually abused by various, unknown perpetrators." The supporting facts for the section

---

[1] All further references to rules are to the California Rules of Court.

[2] All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

300, subdivision (c) allegation were identical, except that the word "serious" was omitted.

CFS filed a detention report stating that mother had alleged an employee at C.A.'s school had followed C.A. into the restroom and had touched his penis. Following a sheriff's investigation, the allegations were determined to be unfounded. During the previous school year, mother had reported that C.A. had been sexually molested by a janitor at the school C.A. then attended. Mother had removed C.A. from school towards the end of that school year and had not re-enrolled him until October 2008. Since that time, there had been four more referrals with similar allegations. However, mother refused to make herself or C.A. available to social workers who were trying to investigate the allegations.

In March 2009, a referral was received through the Child Abuse Hotline, reporting mother had alleged that on three different occasions, the school janitor had "crawled underneath the stall in the boys' bathroom at [C.A.'s] school, grabbed [C.A.'s] penis and played with it." The reporting party had interviewed C.A., who told the reporting party that the janitor had "swung him by his privates," and that the janitor at his previous school had hurt him too and had forced him into a dark room where he had to find a flashlight under a chair to get out. The reporting party stated that mother had alleged another incident had occurred in March 2007 when she had left C.A. in the care of a coworker and another. C.A. told mother they had tied him to a chair, taped his mouth shut, put a rope on his neck, cut his penis with scissors, and forced oral copulation. Mother took the child to the emergency room, but there were no physical findings.

The social worker met with C.A., who appeared to be healthy, appropriate, and well cared for. He appeared to understand the difference between real and pretend and between truth and lies. When the social worker asked C.A. if he had ever been inappropriately touched, he first stated, "No," but almost immediately stated that one time around Christmas in 2008 when he had gone to the bathroom at his school, the janitor had been there and had put his finger on C.A.'s penis and wiggled it around. C.A. stated he had kicked the janitor in the face and then said he had kicked him in the "nuts" and in the "butt." C.A. said he had run out of the bathroom screaming. He had told his friends what happened but had not told his teacher because she would yell at him. When asked if anyone else had touched him, he reported that someone had touched him when he was at "Tanya's house," and that "Tanya" had touched him on the butt. When he was at another school, another janitor had touched him in the bathroom. When asked for details, C.A. stated, "So many questions—I'm all out of ideas now." C.A. stated mother had told him "'they' look for weak people," and when asked who "they" were, he stated "'mommy's going to kill them, that they will go in the ambulance and then they will be buried in the ground.'" He repeated that he was out of ideas and asked to leave.

The social worker made an unannounced visit to mother's house. She asked mother when she first felt C.A. had been molested, and mother reported that another child had molested him in about June 2006 when he was playing on the jungle gym at a fast food restaurant. In 2007, a family member of her roommate had molested him. In April 2008, a janitor at his former school had molested him, and around Christmas 2008, the janitor at his current school had molested him. Mother admitted that C.A. had a vivid

imagination, and he liked to embellish his descriptions of past incidents. Mother had taken C.A. to various medical facilities to have him examined, but there had never been any findings indicating abuse. She had made police reports about the alleged incidents, which were investigated and closed because of lack of evidence. C.A. had undergone forensic interviews at the Children's Assessment Center (CAC) in July 2008 and April 2009, but the allegations of sexual abuse could not be substantiated because C.A. was not consistent in his reports.

Since 2006, CFS had received 13 referrals, all but one of which alleged sexual abuse of C.A. by various perpetrators.[3] Mother was keeping C.A. out of school because she believed his perpetrator was still at large, and C.A. was still at risk of further sexual abuse, even though the school had set up a safety plan for him. C.A. had missed 35 of 99 days at school, and his teacher had stated C.A. would not likely be promoted to second grade.

At the detention hearing, the juvenile court held that a prima facie case had been established that C.A. came within section 300. C.A. was placed in the temporary custody of mother under the supervision of CFS. The court ordered a psychological evaluation for mother.

---

[3] In its brief, CFS suggests that *mother* had made 12 prior referrals since 2006, claiming C.A. had been molested by various perpetrators and states that mother "is responsible for initiating the approximately thirteen claims that [C.A.] has been abused by different school personnel and caretakers . . . ." However, the record shows mother had identified four incidents as to which she had made police reports and had taken C.A. for medical examinations. It appears clear that CFS received duplicative referrals from various mandated reporters (see Pen. Code, § 11165.7) concerning the same four incidents of alleged molestation, not that mother had alleged 13 separate incidents.

CFS filed a jurisdiction/disposition report in May 2009. C.A. continued to be maintained with mother. Mother had sent a fax to CFS stating she believed CFS had misled her and she was no longer willing to comply with services. She also stated later that she was unwilling to undergo a psychological evaluation. She eventually agreed to continue to work with Dr. Christopher Deulen in therapy. In May 2009, mother told the social worker her last session with Dr. Deulen had been helpful, and he had convinced her that C.A. might be manipulating the situation to his benefit and that the school incidents might not have occurred. The social worker attached a copy of the April CAC interview of C.A. The CAC report stated that C.A. appeared "highly anxious," and the interviewer "believed that [C.A.] may have been influenced by a family member or unrelated party to make false allegations . . . ." The interviewer "recommended that [C.A.] meet with a therapist to discuss the anxiety due to the constant interviewing regarding all of the alleged molestation."

The social worker stated that C.A. was bright and happy and communicated well with adults and children. However, he became "extremely anxious" when asked to discuss the alleged molestations, "resulting in his apparent need to provide details that might be fabricated." The social worker continued, "There is further concern that [C.A.] has now learned that his mother is highly protective of him, and over-concerned for his physical wellbeing. It is possible that he might be using this concern, in order to manipulate the situation. This might well lead to some serious repercussions in the future, should he continue to report incidents that have no foundation." CFS recommended that C.A. remain in mother's home with family maintenance services.

Mother lodged an affidavit with the court and attached a letter from Dr. Deulen, which stated that overall, mother and C.A. had a "positive relationship," and "there is no evidence of abuse or neglect on her part."[4] C.A. continued to assert that the molestations had taken place, but Dr. Deulen believed he had been "using the situation to gain 'power, attention or other things.'" Dr. Deulen stated that C.A. "seems to know how to 'work his mom,'" and mother might be hypersensitive because of C.A.'s "having been molested in the past." Dr. Deulen stated he believed C.A. had in fact been molested in a prior incident some years earlier. Mother had agreed to work with Dr. Deulen in therapy on her hypersensitiveness and other parenting skills.

The jurisdiction/disposition hearing began on May 18, 2009. Counsel for CFS reported that an unknown woman had appeared at the homes of the social worker and her supervisor to attempt to serve mother's affidavit in the middle of the night. Mother's lawyer explained that mother had been unable to reach her previous lawyer and had been concerned about filing paperwork in advance of the hearing, so she had an acquaintance attempt to serve the papers. Mother now understood that papers should be served through her lawyer's office. The court admonished mother for harassing the social worker and supervisor. The juvenile court continued the matter for a month.

CFS filed an amended detention petition and report later in May 2009. The allegations of the amended petition were identical to those of the initial petition, but in

---

[4] Mother lodged her affidavit with the court, with Dr. Deulen's letter attached, before the jurisdiction hearing; however, it does not appear that it was submitted into evidence or that the juvenile court read or considered it.

the amended detention report CFS recommended that C.A. be detained in a confidential foster placement. CFS reported that mother had told a psychologist to whom she had been referred that "she would not be able to keep the appointments for herself and [C.A.], due to 'personal reasons.'" Mother seemed to be "highly anxious and rigid in her thinking throughout the conversation, and [the psychologist] expressed the possibility that [mother] . . . might be escalating toward a possible psychotic episode."

The social worker reported that she had spoken with the principal of C.A.'s school, who stated C.A. had been suspended for two days after acting out against other students in three separate incidents, including pushing down one child and hitting and scratching two others. When informed of the suspension, mother became extremely angry at the school personnel but told C.A. they would have a good time together during his days off school. The social worker stated that, because of mother's unwillingness to undergo psychological evaluation and C.A.'s aggressive behavior at school, she was concerned the situation was escalating, and mother's mental instability was placing C.A. at risk of severe emotional abuse. At the detention hearing on the amended report, the court found a prima facie case had been established for detention outside the home and detained C.A. with his maternal grandparents.

CFS filed an addendum report in mid-June 2009. The report stated that during a supervised visit, Mother had absconded with C.A. The maternal grandfather contacted the police, and an arrest warrant was issued. Mother agreed to turn herself in two days later. C.A. did not appear to have been perturbed by the experience and returned happily to his grandparents; however, mother made inappropriate comments to C.A., such as,

"'Mommy loves you very much, but she's going to jail for a long time for what she's done.'" The charges of parental abduction were dropped.

Meanwhile, mother had completed a court-ordered psychological evaluation with Dr. Kenneth Meyer, and the social worker attached a copy of Dr. Meyer's report. Mother's testing indicated some possibility of neuropsychological problems, and she exhibited "a histrionic personality disorder, with obsessive compulsive personality traits, and narcissistic personality features. Further, she [was] in high denial of her problems, and demonstrate[d] rigidity and inflexibility when dealing with problematic situations." Dr. Meyer further stated that mother was "unlikely to seek psychotherapy or to cooperate fully with treatment if it is implemented," and she "demonstrate[d] a long term, deeply rooted, personality disorder of a moderate severity" with a high level of denial. However, she had an average level of impulse control and was well oriented to reality. The report was silent on the issues of mother's ability to parent C.A. and to provide a safe environment for him.

The social worker noted the grandparents had reported that C.A. had acted out with them physically and verbally, and once the Children's Crisis Response Team had been contacted when the grandparents were unable to calm C.A. down. CFS recommended that C.A. be continued in foster care and that mother be provided reunification services.

At the continued jurisdiction hearing, mother's counsel stated, "We're willing to submit on County Counsel's recommendation," but requested two hours of visitation per week instead of the recommended one hour of visitation. The juvenile court found the

allegations of the amended petition true and found that C.A. came within section 300, subdivisions (b) and (c). The juvenile court continued C.A.'s placement with the maternal grandparents and ordered reunification services for mother.

This appeal ensued.

III. DISCUSSION

A. Consequences of Mother's Submitting on the Recommendation

At the jurisdiction hearing, mother's counsel submitted on the recommendations of CFS. "'[S]ubmitting on the recommendation' constituted acquiescence in or yielding to the social worker's recommended findings and orders, as distinguished from mere submission on the report itself. This is considerably more than permitting the court to decide an issue on a limited and uncontested record . . . . The mother's submittal on the recommendation dispels any challenge to and, in essence endorses the court's issuance of the recommended findings and orders." (*In re Richard K.* (1994) 25 Cal.App.4th 580, 589 (*Richard K.*), fn. omitted.)

Mother now contends, however, that the juvenile court prejudicially erred when it accepted her submission at the jurisdiction hearing on CFS's recommendations without ensuring she understood the ramifications and wanted to waive her rights. Rule 5.682[5]

---

[5] "(a) . . . [¶] At the beginning of the jurisdiction hearing, the petition must be read to those present. On request of the child or the parent, . . . the court must explain the meaning and contents of the petition and the nature of the hearing, its procedures, and the possible consequences.

"(b) . . . [¶] After giving the advisement required by rule 5.534, the court must advise the parent . . . of the following rights:

"(1) The right to a hearing by the court on the issues raised by the petition;

[footnote continued on next page]

establishes procedures for advisement of rights, inquiries of the parents, and admissions of allegations at the jurisdictional hearing. Rule 5.682 is an "unambiguous expression of judicial policy," and failure to provide the required advisements, obtain an express waiver of rights, and make the required findings is error. (*In re Monique T.* (1992) 2 Cal.App.4th 1372, 1377 (*Monique T.*) [addressing former rule 1449, renumbered eff. Jan. 1, 2007].)

[footnote continued from previous page]

"(2) The right to assert any privilege against self-incrimination;

"(3) The right to confront and to cross-examine all witnesses called to testify;

"(4) The right to use the process of the court to compel attendance of witnesses on behalf of the parent . . . ." [¶] . . . [¶]

"(c) . . . [¶] The court must then inquire whether the parent . . . intends to admit or deny the allegations of the petition. . . . If the parent . . . wishes to admit the allegations, the court must first find and state on the record that it is satisfied that the parent . . . understands the nature of the allegations and the direct consequences of the admission, and understands and waives the rights in (b).

"(d) . . . [¶] An admission by the parent . . . must be made personally by the parent . . . .

"(e) . . . [¶] The parent . . . may elect to admit the allegations of the petition, plead no contest, or submit the jurisdictional determination to the court based on the information provided to the court and waive further jurisdictional hearing. . . .

"(f) . . . [¶] After admission, plea of no contest, or submission, the court must make the following findings noted in the order of the court:

"(1) Notice has been given as required by law; [¶] . . . [¶]

"(3) The parent . . . has knowingly and intelligently waived the right to a trial on the issues by the court, the right to assert the privilege against self-incrimination, and the right to confront and to cross-examine adverse witnesses and to use the process of the court to compel the attendance of witnesses on the parent['s] . . . behalf;

"(4) The parent . . . understands the nature of the conduct alleged in the petition and the possible consequences of an admission, plea of no contest, or submission;

"(5) The admission, plea of no contest, or submission by the parent . . . is freely and voluntarily made;

"(6) There is a factual basis for the parent['s] . . . admission;

"(7) Those allegations of the petition as admitted are true as alleged; and

"(8) The child is described under one or more specific subdivisions of section 300." (Rule 5.682(a)-(f).)

The record is clear that the juvenile court failed to advise mother of her rights, failed to take personal waivers from mother, and failed to find that her waivers were knowing and intelligent as required by rule 5.682.

B. Waiver

CFS argues that mother waived her rights, both by virtue of an earlier waiver of rights at the detention hearing on the amended petition, and by failing to raise the issue before the juvenile court. CFS further argues that any error was harmless.

1. Waiver Based on Conduct at Detention Hearing

At the May 28, 2009, detention hearing on the amended petition, after father's[6] counsel "waive[d] reading, arraignment, advisement of rights and enter[ed] denials," mother's counsel stated, "Likewise." CFS argues that waiver extended to the subsequent jurisdiction hearing.

CFS has provided no authority for the proposition that a waiver of the rights that apply at one proceeding extends to different rights that apply at subsequent proceedings, and, indeed, case law is to the contrary. The court in *Monique T.* held that the "advisement of rights and a personal waiver is required [at the jurisdiction hearing], even though the mother agreed to submit the matter at the detention hearing." (*Monique T.*, *supra*, 2 Cal.App.4th at p. 1377.) *In re Stacy T.* (1997) 52 Cal.App.4th 1415 (*Stacy T.*), while not precisely on point, provides useful analysis. In that case, the social services agency contended the mother had forfeited the right to question certain witnesses at the

[6] C.A.'s father is not a party to this appeal.

jurisdiction hearing because she did not question them at the detention hearing. The court rejected that argument, explaining, "This proposition is unsound because the interests at stake at the two hearings are not comparable. The interest at stake at detention is a very temporary loss of custody, . . . From the parent's point of view the interest at stake at the jurisdictional and dispositional hearings is much greater. Hence, the motivation to question the authors of the reports who conducted the investigation and gathered the information supporting the jurisdictional allegations would also be much greater." (*Id.* at p. 1425.) The reasoning of the *Stacy T.* court applies equally well to the advisement of rights and waivers of those rights at the jurisdiction hearing. We conclude mother did not waive the advisement of rights and the making of findings under rule 5.682. (*Monique T.*, *supra*, 2 Cal.App.4th at p. 1377.)

2. Waiver Based on Failure to Raise Issues in Juvenile Court

CFS next argues that, because mother failed to make any objections in the juvenile court, she has forfeited her challenges on appeal. In *Richard K.*, the mother who submitted on the recommendation at the disposition hearing argued on appeal that the evidence was insufficient to support the dispositional order removing the children from her custody. (*Richard K.*, *supra*, 25 Cal.App.4th at p. 587.) The court rejected her argument, explaining, "If, as occurred in this case, the court in turn makes the recommended orders, the party who submits on the recommendation should not be heard to complain. As a general rule, a party is precluded from urging on appeal any point not raised in the trial court. Any other rule would permit a party to play fast and loose with the administration of justice by deliberately standing by without making an objection of

which he is aware. [Citation.] Similarly, in this case, by submitting on the recommendation without introducing any evidence or offering any argument, the parent waived her right to contest the juvenile court's disposition since it coincided with the social worker's recommendation. He who consents to an act is not wronged by it. [Citation.]" (*Id.* at pp. 589-590.)

Richard K. is distinguishable, however, on its facts. In *Richard K.*, the mother submitted at the *dispositional* hearing. Unlike in the present case, the mother at the jurisdictional hearing had cross-examined the author of the social study report and had offered testimony of the children's stepfather and of her teenage daughter. (*Richard K., supra,* 25 Cal.App.4th at pp. 582-583.) The case did not address the central issue before us—the failure to advise a parent of her rights or to take her personal waivers at the jurisdiction hearing—and is therefore no authority for the proposition that failure to object waives error under rule 5.682.

C. Standard of Review

It is indisputable that the juvenile court erred in failing to comply with the requirements of rule 5.682. The parties disagree as to the standard of review applicable to such error—mother asserts the error was rooted in constitutional due process and should be reviewed under the more stringent standard of *Chapman v. California* (1967) 386 U.S. 18 while CFS argues the standard of *People v. Watson* (1956) 46 Cal.2d 818, should apply. In *Monique T.*, the court found it unnecessary to determine whether error in failing to advise a parent of rights and obtain a personal waiver of due process rights should be analyzed under *People v. Watson* or the stricter standard *Chapman v.*

California, because the court found the error would have been harmless under either standard. (*Monique T., supra*, 2 Cal.App.4th at pp. 1377-1378.) It does not appear that any other court has resolved that issue. We also need not determine that issue because we conclude the error requires reversal under either standard.

D. Analysis

CFS asserts that mother has failed to set forth "what other evidence might have been presented, what questions would have been asked, or how else the court's purported failure to obtain her personal waiver of rights affected the outcome." To the contrary—mother argues she was unable to present specific defenses and evidence, including that: (1) CFS failed to properly plead its allegation under section 300, subdivision (b) because it did not allege any physical harm or illness; (2) CFS failed to provide sufficient evidence to support its allegation under section 300, subdivision (b); (3) CFS could not prove that any harm to C.A. was due to mother's failure to protect or supervise him because CFS claimed mother was instead too protective; (4) mother could have presented additional evidence that C.A. was physically and mentally healthy at the time of the detention hearing; (5) CFS failed to properly plead its allegation under section 300, subdivision (c) because it did not allege any offending parental conduct; (6) the evidence did not show any offending parental conduct because mother was likely passing along what C.A. told her; (7) mother could have called C.A.'s treating psychologist to testify about his conclusion that C.A. had actually been molested in the past and was likely making false claims now; (8) mother could have called school workers to substantiate her claim that the district, not mother, had held C.A. out of school; and (9) mother could have

pointed out that C.A.'s physical aggression, acting out, and anxiety did not begin until after the dependency proceedings began. As we discuss below, several of mother's contentions are meritorious.

1. Requirements for Pleading and Proof

Section 332, subdivision (f) requires a dependency petition to include a "concise statement of facts, separately stated, to support the conclusion that the child upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted." A section 300 petition is sufficient if it presents the essential facts necessary to establish at least one ground for asserting juvenile court jurisdiction. (*In re Janet T.* (2001) 93 Cal.App.4th 377, 389 (*Janet T.*) At the jurisdictional hearing, the juvenile court must determine whether the child falls within section 300 (*In re Michael D.* (1996) 51 Cal.App.4th 1074, 1082), based on "circumstances existing *at the time of the hearing*" that make it likely the child will suffer the same kind of harm in the future (*Janet T., supra,* at p. 388.) The petitioner has the burden of proof by preponderance of the evidence (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 329, superseded on other grounds as stated in *In re Christopher C.* (2010) 182 Cal.App.4th 73, 82).

2. Section 300, Subdivision (b)

Mother first contends she could have shown that the petition did not allege any risk of physical harm or illness under section 300, subdivision (b), and no evidence was presented to support such an allegation.

Section 300, subdivision (b) provides: "The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child, . . . or by the inability of the parent . . . to provide regular care for the child due to the parent's . . . mental illness, developmental disability, or substance abuse. . . ." Here, the petition alleged that C.A. "is suffering or is at substantial risk of suffering serious emotional damage, due to the ongoing allegations by the mother . . . that he is being or has been sexually abused by various, unknown perpetrators." On its face, the petition fails to allege any risk of physical harm. CFS argues, however, that a substantial risk that the child will suffer illness is sufficient to support a finding under section 300, subdivision (b), and C.A.'s "emotional damage could be attributed to a type of illness . . . ." We disagree with CFS's position.

First, the petition did not allege a substantial risk of illness, but alleged a substantial risk of serious emotional damage.

Second, CFS's position is inconsistent with case law (which CFS has failed to acknowledge) interpreting section 300, subdivision (b). In *In re Alysha S.* (1996) 51 Cal.App.4th 393, the court stated: "'Subdivision (b) means what it says. Before courts and agencies can exert jurisdiction under section 300, subdivision (b), there must be evidence indicating that the child is exposed to a *substantial* risk of *serious physical* harm or illness." (*Id.* at p. 399.) In that case, the court held the allegations under section 300, subdivision (b) were insufficient when the petition alleged only that the father had, a year earlier, touched the minor's private parts in a manner which the mother felt was

inappropriate, but the petition did not allege the severity of any physical harm resulting from the alleged touching or that the acts might continue in the future. (*In re Alysha S.*, *supra*, at p. 399.) Similarly, in *Janet T.*, *supra*, 93 Cal.App.4th at p. 388, the court stated that "before courts may exercise jurisdiction under section 300, subdivision (b) there must be evidence 'indicating the child is exposed to a substantial risk of serious physical harm or illness.'" In that case, the challenged petition alleged that the "mother had demonstrated numerous 'mental and emotional problems'" that "endangered the children's 'physical and emotional health and safety,'" but did not include other facts to suggest how the "mother's mental health problems created a 'substantial risk' her children would suffer 'serious physical injury or illness.'" The court held the allegations were insufficient under section 300, subdivision (b). (*Janet T.*, *supra*, at p. 389.)

Finally, CFS's interpretation would render section 300, subdivision (c) mere surplusage. In other words, if emotional damage were equated to a type of illness for purposes of section 300, subdivision (b), there would be no need for a separate subdivision (c) expressly addressing emotional damage. In construing a statute, we "give meaning to every word" or phrase so as not to render any portion of the statutory language mere surplusage. (*Reno v. Baird* (1998) 18 Cal.4th 640, 658.)

We conclude that on its face, the petition failed to allege facts that would establish juvenile court jurisdiction under section 300, subdivision (b). Moreover, CFS did not offer any evidence that would have supported such an allegation. Instead, the social worker indicated C.A. was a "healthy, appropriate, and well cared for" child who had regular physical and dental checkups. We conclude that mother could have raised a

credible defense that CFS failed to plead or prove facts sufficient to support the section 300, subdivision (b) allegation.

3. Section 300, Subdivision (c)

Mother next argues she was unable to present the defense that CFS failed to properly plead and prove its allegation under section 300, subdivision (c). In a closely related argument, she identifies evidence that she could have offered to support her position.

Section 300, subdivision (c) provides a basis for dependency court jurisdiction when "[t]he child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent . . . ." As noted, the petition alleged C.A. "is suffering, or is at substantial risk of suffering emotional damage, due to the ongoing allegations by the mother . . . that he is being or has been sexually abused by various, unknown perpetrators."

CFS argues that the supporting facts as to the section 300, subdivision (c) allegation were found in the detention and jurisdiction/disposition reports. We will accept CFS's position for purposes of argument and will focus on the evidence offered to support those allegations and the evidence mother contends she could have offered to counter them.

Section 300, subdivision (c) addresses "abusive, neglectful and/or exploitive conduct toward a child which causes any of the serious symptoms identified in the

statute." (*In re Alexander K.* (1993) 14 Cal.App.4th 549, 559.) The social services agency has the burden of establishing three elements: "(1) serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior or a substantial risk of severe emotional harm if jurisdiction is not assumed; (2) offending parental conduct; and (3) causation. [Citation.]" (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1379 (*Brison C.*).)

CFS notes the supporting facts included that the CAC interviewer had described C.A. as anxious and had noted that he needed a therapist to deal with his anxiety. Moreover, C.A. had been suspended from school for several days because of his violent behavior toward other students while under mother's care. Finally, he had acted out physically and verbally with his grandparents. CFS also points to other evidence that the molestation claims were unsubstantiated and notes mother's history of being noncooperative with CFS and her reluctance to undergo a psychological evaluation. However, none of that evidence would provide any """reason to believe the acts may continue in the future."""" (*Brison C.*, *supra*, 81 Cal.App.4th at p. 1379.) Dr. Meyer stated his opinion that mother appeared to be anxious and worried but she did not exhibit any bizarre or psychotic behavior patterns. She was oriented to person, place, time, and situation, and there was no indication of hallucinations, "but paranoid ideation was noted." Mother did not manifest symptoms of depression or anxiety, and she denied having any functional problems with daily living. Dr. Meyer also stated his opinion that mother had a personality disorder of moderate severity but did not tie that disorder to mother's past behavior or any risk of future harm to C.A.

In *Brison C.*, the parents were involved in a contentious dispute over the custody of their nine-year-old son. The mother claimed the father had sexually molested the boy, and the father claimed the mother had physically abused the boy. Both accusations were deemed unfounded after investigation, and the social services agency filed a petition alleging the boy was suffering serious emotional damage because of his parents' dispute. (*Brison C.*, *supra*, 81 Cal.App.4th at p. 1375.) The juvenile court found the allegation true and the boy was placed in foster care. The Court of Appeal reversed, holding there was no substantial evidence showing the boy was seriously emotionally damaged or that he was in danger of being so. The boy exhibited a deep dislike and fear of his father but he did not manifest any other indications of severe anxiety or depression. There was likewise no indication the parents suffered from severe mental illness, were delusional, or were incapable of interacting appropriately. (*Id.* at p. 1376.) The court observed: "'While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.' [Citation.] Standing alone, the past infliction of harm does not establish the substantial risk of future harm. Rather, "'there must be some reason to believe the acts may continue in the future."' [Citation.]" (*Id.* at p. 1379.)

Mother argues she could have introduced favorable evidence to counter the social worker's statements and conclusions. Specifically, she could have called Dr. Deulen to testify that he believed C.A. was in fact a victim of sexual abuse in an earlier incident. In the letter, Dr. Deulen stated he had treated C.A. for issues surrounding sexual abuse a few years earlier, and in December 2008, mother had re-entered C.A. into therapy for the

same issues. Dr. Deulen stated his belief that C.A. had in fact been molested in the prior incident. He observed that C.A. "continue[d] to insist that the molests have taken place," although it was "most probable that [C.A.] has been using the situation to gain 'power, attention or other things.'" With respect to mother, Dr. Deulen stated: "One major issue that [mother] is working on is her 'over protectiveness' and working on boundaries between she and her son. Overall, I see them as having a positive relationship. [C.A.] always appears well fed, well groomed and appropriately 'attached' to his mother. He does not appear afraid of his mom and there is no evidence of abuse or neglect on her part. However, [C.A.] also appears well versed in interpersonal strategy and seems to know how to 'work his mom.' It is quite possible that [mother] is hypersensitive with regards to his having been molested in the past and as such may jump to the 'molest hypothesis' too quickly when there is a less pernicious possible explanation[] for his affect and behavior. [Mother] has agreed to work with me in therapy on this issue and other parenting skills."

Mother also contends she could have provided evidence through Dr. Deulen's letter, that she had enrolled C.A. in therapy before this case began. She could have then argued that her voluntary search for treatment was evidence that C.A. was not in danger. (See *In re Jasmine G.* (2000) 82 Cal.App.4th 282, 288-289.) To the extent CFS argues the petition was supported based on the CAC interviewer's recommendation that C.A. receive therapy for his anxiety, mother argues she could have shown she had already sought therapy for him.

Mother also contends the evidence did not establish any specific conduct on her part that put C.A. at risk. In the detention report, the social worker described mother as having "irrational and somewhat paranoid fears that her son is being sexually abused, [and] this is an emotionally abusive situation. Further, based on the mother's continuing allegations that he has been, or is being, sexually abused, the child himself is being strongly influenced to describe events that may or may not have occurred." Although the social worker stated her belief that the situation was escalating and C.A. might be at risk, that subjective belief was not sufficient evidence to support the juvenile court's findings. (*In re Jasmine G.*, *supra*, 82 Cal.App.4th at p. 289.) Indeed, the report of Dr. Meyer completely failed to address any issue of risk to C.A.

Dr. Deulen stated that mother and C.A. had a positive relationship and there was "no evidence of abuse or neglect on her part." Dr. Meyer provided a general psychological assessment of mother, in which he concluded there was some suggestion of unspecified neuropsychological problems, and that testing demonstrated a "long term, deeply rooted, personality disorder of a moderate severity." However, in his 13-page report, there was not a single mention of how that disorder affected her parenting skills or her interactions with C.A., and there was likewise no mention of how that disorder might put C.A. at risk.

In *Monique T.*, the court found harmless error under the predecessor to rule 5.682 because "the evidence of the mother's inability to care for the child [was] uncontradicted and the mother [did] not indicate that she could have offered different or more favorable evidence or witnesses." (*Monique T.*, *supra*, 2 Cal.App.4th at p. 1378.) Here, in contrast,

CFS offered evidence that was by no means overwhelming and was at best equivocal; whereas, mother has made a credible showing that she could have provided more favorable evidence on her own behalf. We therefore conclude the error requires reversal.

E. Evidence to Support Dispositional Order

Mother contends the dispositional order removing C.A. from her custody should be reversed because it was not supported by clear and convincing evidence. However, in light of our conclusion that the jurisdictional orders must be reversed, the dispositional orders are also moot. (*Janet T.*, *supra,* 93 Cal.App.4th at p. 392.)

IV. DISPOSITION

The jurisdictional order appealed from is reversed and the cause is remanded.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST
Acting P. J.

We concur:

RICHLI
J.

MILLER
J.